

**REMARKS**

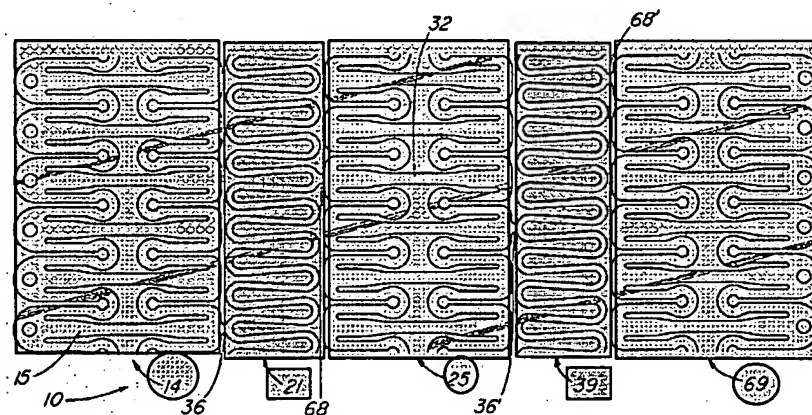
Claims 95-103, 125-149, 184-188 and 195 are currently pending. Claims 1-94, 150-183, 189-194 and 196-200 have been cancelled. Claims 104-124 have been withdrawn. Claim 95 has been amended to recite that (1) the second frequency is different from the first, (2) the first and second bands repeat at least three times, and (3) each cell has a 2:3 ratio of loops at different frequencies. Support for these amendments can be found throughout the specification, for example page 11 at lines 18-24, pages 13-14, as well as Fig. 3. Claim 125 has been amended to delete reference to enclosed spaces and clearly define the stent based upon its triangular cells. Claim 184 has been amended to recite that a plurality of loops of the third loop containing sections form single, continuous undulating circumferential bands. Support for this amendment is found throughout the specification, including specifically page 11 at lines 18-24, as well as Fig. 3. Similarly, claim 195 has been amended wherein each first circumferential band consists essentially of an undulating band of loops and each second circumferential band is a single undulating pattern of loops which occurs consecutively alternating for at least five repetitions with first circumferential bands with no intervening material. Support for this amendment is found throughout the specification, including specifically pages 13-14 and pages 11-12 at lines 11:24-12:11, as well as Fig. 3. Lastly, Claims 97, 102 and 103 have been amended to refer back specifically to Claim 95. Applicant reserves the right to prosecute the subject matter of

the cancelled claims in one or more continuation, continuation-in-part, or divisional applications.

No new matter is introduced by these amendments and the amendments are supported by the instant specification.

### **Response to Rejection Under 35 U.S.C. §102(e) Based on Berry**

Claims 95-103, 125-138, 140-145, 147-148, 150-159, 170-182, 184-188 and 195-200 have been rejected under 35 U.S.C. §102(e) as anticipated by Berry et al. (6,231,598). Figures 5 and 8 of Berry are identified, wherein sections 14, 25 and 69 (in yellow below) allegedly show loop containing sections of lower frequency and sections 21 and 39 (shown in pink below) allegedly show high frequency loop containing sections. Applicants respectfully disagree with this rejection.



*FIG. 8*

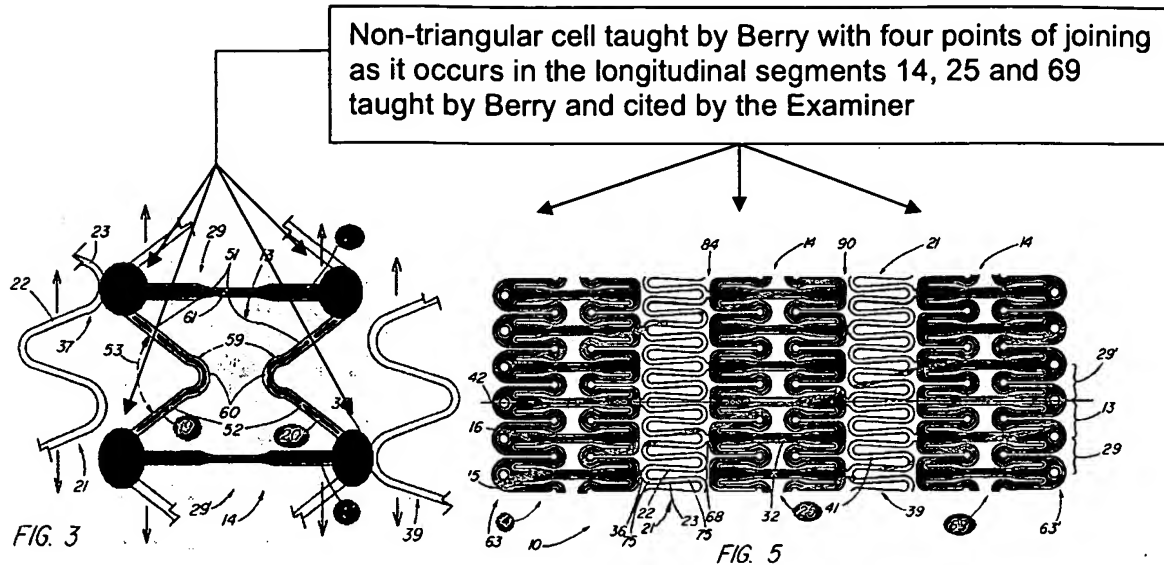
All of the pending claims contain one or more distinguishing features not taught or suggested by Berry. For example, claims 95-103, 125-149 and 184-188 are directed to a stent that "consists essentially of" triangular cells. In patent parlance, "consisting essentially of" is a transitional phrase with a specific meaning: according to the MPEP

(§2111.03), “consisting essentially of” “limits the scope of a claim to the specified materials or steps ‘and those that do not materially affect the basic and novel characteristics of the claimed invention.’” (In re Herz, 537 F.2d 549, 551-2 (CCPA 1976)). These claims are directed to a stent having novel structural features in the form of a stent having exclusively triangular cells. Using the transitional phrase “consisting essentially of” in describing the triangular cells of the stent makes clear that the stent may not contain cells having square cells or cells of other shapes. A cell is “triangular” when, there are only three points of connection between adjacent low-frequency (or high amplitude) loop containing sections.

In contrast, Berry describes a stent having different cell types: The Berry stent contains rigid sections defined by square cells that contain a straight longitudinal connector, and connector regions having triangular cells. The bulk of the Berry stent is made up of square cells, characterized by Berry as being longitudinally inflexible (see col. 5, lines 6-9). The presence of these stiff square cells results in a stent that is materially different from the novel triangular configuration of the instant claims.

With regard to Claims 95-103, 125-149 and 184-188 which recite a stent consisting essentially of triangular cells, Berry expressly teaches the opposite, *i.e.*, a stent having non-triangular cells. The first and second longitudinal struts 15, 16 coupled with circumferential adjustable members 19, 20 form “a closed cell 13” (illustrated below) according to Berry (see col. 9, line 24). This cell does not meet the description of a triangular cell as defined by the present application as a cell with “three associated points” of joining to form a cell between first loop containing sections (page 20, line 24 to page 21, line 13). Indeed, these non-triangular cells in Berry make up a substantial

part of the stent as a whole. As a result, the non-triangular cells materially change the Berry stent.



Therefore, Berry does not anticipate present Claims 95-103, 125-149 and 184-188 because Berry does not consist essentially of triangular cells.

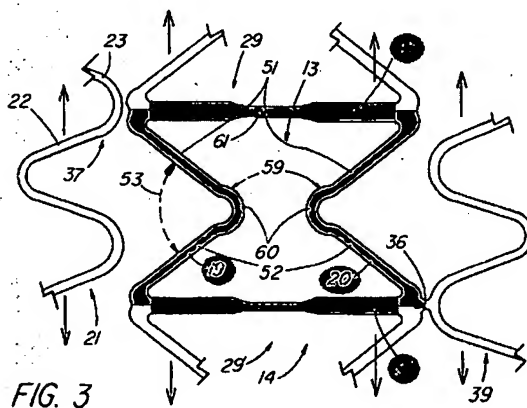
In addition, claims 95-103 and 184-188 are not anticipated by Berry because these claims contain the further recitation that each cell of the stent is formed of two loops at the first frequency or amplitude and three loops at the second frequency or amplitude. The Berry stent includes square cells as shown in Figure 3 above which do not contain two loops at a first frequency or amplitude and three loops at a second frequency or amplitude different from the first.

Claims 125-149 are not anticipated by Berry because each cell in the stent of these claims must be triangular and must have at least the ten members defined by the claims. The Berry stent includes the square cells illustrated above in Figure 3. These

cells make up a substantial portion of the Berry stent and at best only contain 6 members. Therefore, the Berry stent does not anticipate claims 125-149.

Claims 184-188 also are not anticipated by Berry for the additional reasons that these claims recite the first and second loop containing sections form “first single, continuous, undulating bands around the circumference of the stent” and the third loop containing sections also form “second single continuous undulating circumferential bands” each of which is “disposed in the generally circumferential space between each first band and alternately joined to said first bands”.

Berry fails to teach a stent wherein first single, continuous undulating bands alternate consecutively with second single, continuous undulating bands along the longitudinal axis of the stent to exclusively form triangular cells, as recited in present Claims 184-188. As previously noted, the longitudinal segments taught by Berry are explicitly formed of both circumferentially adjustable members and longitudinal struts and do not form only triangular cells (as shown below).



By contrast, first loop containing sections are described in the instant specification as a pattern consisting of “two loops 304 and 306 per period wherein loops 304 open to the

right while loops 306 open to the left” such that “member 308 joins one loop 304 to its following loop 306 and member [310] joins one loop 306 to its following loop 304” (page 11, lines 18-24). This arrangement results in a single, continuous undulating band as illustrated by Fig. 3 as follows:

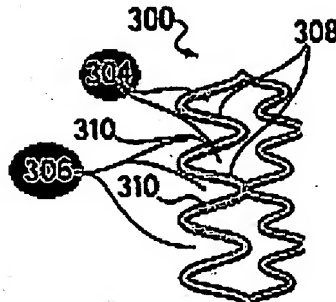


FIG. 3

The longitudinal segments identified by the Examiner in Berry therefore do not meet the limitations of present Claims 184-188 insofar as the longitudinal segments taught by Berry are not formed of singular, continuous undulating bands as recited therein.

In combination with the “consisting essentially of” transition phrase used in these claims, Berry fails as anticipatory prior art regardless of how Berry is viewed. If the Examiner proposes that the entire section identified in Berry as sections 14, 25 and 69 are considered a loop containing section, then these sections fail because no “single continuous undulating band” is formed, but rather a segment having two single undulating bands and a straight connecting element forms. If, on the other hand, the Examiner calls each half of these sections (14, 25 and 69) a single continuous undulating band, then Berry fails because the straight longitudinal strut is excluded by the consisting essentially of language of the claims, particularly because the straight

longitudinal strut materially changes the character of the stent in that it is no longer uniformly flexible or made up of exclusively triangular cells, both of which are recited elements of these claims.

In addition, claims 184-188 also require that one band have a first amplitude and the adjacent band have a second amplitude higher than the first amplitude. Figures 5 and 8 identified by the Examiner do not illustrate bands of loops having two different amplitudes. Thus, for this additional reason, Berry does not anticipate claims 184-188.

Claim 195 is not anticipated by Berry because this claim is directed to a stent having at least five consecutively alternating repetitions of high and low frequency single undulating bands of loops with no intervening material. Berry does not teach or suggest such a stent. Rather, Berry describes the need for a straight longitudinal strut between every second and third undulating band. Further, these longitudinal struts are specifically designed to provide rigidity within the stent after expansion. Therefore, Berry does not teach or suggest the stent of claim 195.

For all of these reasons, the instant claims are not anticipated by Berry. Applicants respectfully request reconsideration and withdrawal of the §102(e) rejection.

**Response to Rejection Under 35 U.S.C. §103(a) Based on Berry in View of Richter**

Claims 139, 146 and 149 have been rejected under 35 U.S.C. §103(a) as unpatentable over Berry et al. (6,231,598) in view of Richter (5,807,404).<sup>1</sup> Applicants respectfully disagree with this rejection.

Dependent Claims 139, 146 and 149 of the present application recite various characteristics of discrete elements of the triangular cells recited by independent Claim 125. Specifically, Claim 139 recites that the first, second, third, and fourth members are more flexible than the fifth, sixth, seventh, eighth, ninth and tenth members of the triangular cells recited by Claim 125. Claim 146 recites that the fifth, sixth, seventh eighth, ninth and tenth members have a greater resistance to radial compression than the first, second, third and fourth members of the triangular cells recited by Claim 125. Lastly, Claim 149 recites that at least one portion of at least one of the fifth, sixth, seventh, eighth, ninth, and tenth members have greater resistance to radial compression that at least one portion of at least one of the first, second, third and fourth members of the triangular cells taught by Claim 125. Each of these claims relate to the stent recited by independent Claim 125, consisting essentially of a plurality of triangular cells.

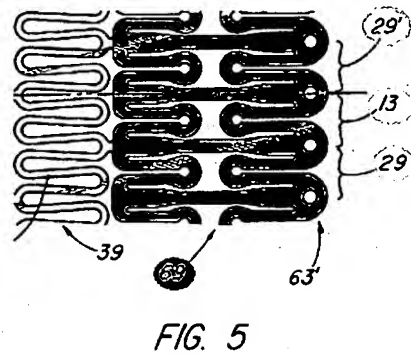
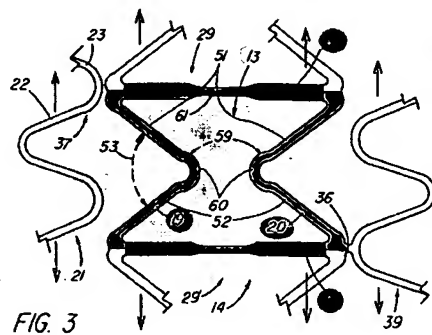
Berry does not teach a stent consisting essentially of triangular cells. Rather, the longitudinal segments (69) taught by Berry include “closed cells” (13, 29, 29') comprised

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<sup>1</sup> In this section of the Office Action, the Examiner makes a single reference to “Trapp-’027” in what appears to be further discussion of the disclosures of Berry. For consistency and in lieu of further identifying information, it is assumed herein that this section pertains in its entirety to Berry as opposed to the otherwise unspecified “Trapp-’027.”

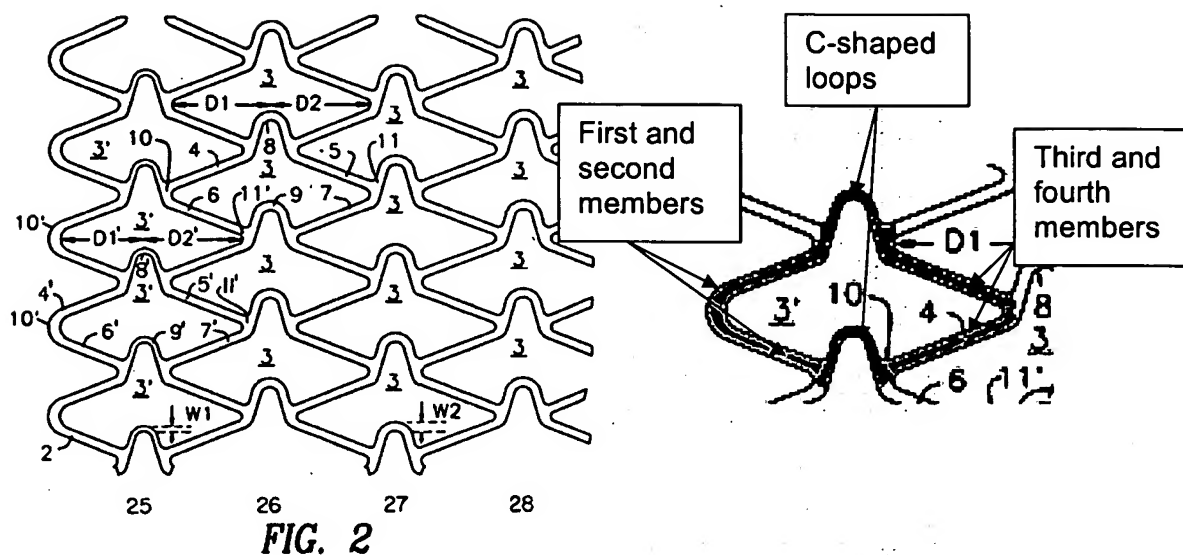


of longitudinal struts (15, 16) interconnected by circumferentially adjustable members (19, 20), as follows:

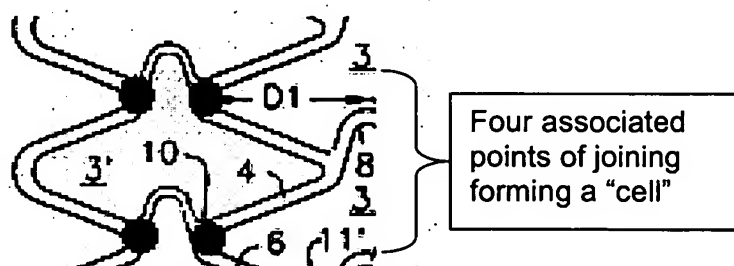


As such, the cells taught by Berry are not triangular cells as they are understood under the present application, and the stent taught by Berry does not consist essentially of triangular cells.

Richter does not remedy this deficiency in Berry because Richter also teaches a stent that does not consist essentially of triangular cells. To the contrary, Richter teaches a stent having cells wherein each cell has a first member, a second member, a third member and a fourth member, with a "C-shaped loop" disposed between the first and third members as well as between the second and fourth members.



The cells therefore have at least four associated points of joining in the formation of a cell, as opposed to the triangular cell taught by the present application, which describes a cell with three associated points of connection.



Moreover, as noted by the Examiner, Richter teaches enhancing flexibility by having C-shaped loops of a thinner width than other C-shaped loops in the same stent. Thus greater flexibility is achieved according to Richter with reference to an element not found in the claims cited by the Examiner in the present application, wherein the closed

cell is formed by loop containing sections in direct connection with one another without an intervening element between them.

Reconsideration and withdrawal of the rejections under 35 U.S.C. §103(a) as to the present Claims 139, 146 and 149 are respectfully requested for the above reasons.

### **CONCLUSION**

Based on the foregoing amendments and remarks, applicant respectfully requests reconsideration and withdrawal of the rejections of the pending claims and requests allowance of this application.

**AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 50-4387, Order No. 92077.003us7.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 50-4387, Order No. 92077.003us7.

Respectfully submitted,  
Cadwalader, Wickersham & Taft LLP

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